

October 28, 1999

Addicted to Spending, Gotta Raise More Taxes

Clinton's Latest Nicotine Patch

Put simply: The Clinton-Gore Administration is addicted to spending. Unable to help or control their habit, the Clintonites look for any way to feed it. Enter the so-called tobacco "look-back" penalty. This we understand to be a proposal designed to penalize tobacco companies for not reducing teen smoking. The Clintonites claim it will raise them \$6 billion that they can use to feed their spending habit.

We have not a shred of paper about this amorphous proposal and know of none forthcoming. But, we can deduce that it amounts to no more than a nicotine patch to be placed over the ever-growing gap between this President's excessive spending demands and the available resources. As such, it is an ill-conceived, unworkable, perhaps unconstitutional, retroactive tax — and a ludicrous idea in that it won't even offset the increased spending for this fiscal year.

The look-back proposal was brought up by the White House during the appropriations process as a means to raise up to \$6 billion. President Clinton made a public bid for the tax during the signing ceremony of the VA/HUD appropriations bill on October 20: "I still believe that it would be good health policy to have . . . at least a look-back provision, to protect kids from smoking." Yet, no details were then or have since been provided. Like so many of the Administration's proposals this one has never moved beyond the level of a talking point. Before it can ever become anything more, real questions will need to be answered.

When is a Penalty Not a Penalty? When it's a Tax

Here's what we'd like to know about this plan: First, what are the youth smoking targets that have or have not been met? Second, who would determine if these undetermined targets have or have not been met? Third, how would such a determination be made? Fourth, when would the targets be set and what would be the time frame for achieving compliance? Finally, without targets currently established, or a time frame in which to meet them, why would a penalty be invoked? Because these questions apparently haven't been asked — let alone answered — it's fair to suggest what we have is a tax-revenue-raising scheme under the guise of penalty.

The President's own comment promoting the look-back concept belies the penalty justification: "... We're seeing an absence of those kinds of efforts, even in the states that have gotten a lot of money — some states are doing it, some states aren't. So I think it would be good policy." What he's talking about are states' anti-smoking programs, something fundamentally different than setting a standard and fairly enforcing it. The fact is Clinton simply wants the tax

money — and he justifies it as a penalty to pay for youth anti-smoking — yet it is not clear how much, if any, of the \$6 billion he wants to spend on such programs.

If it's to be an Offset for This Year, The "Penalty" Has to Be Retroactive

Even without details, the Administration has placed a dollar figure on its look-back proposal: it's promised to generate \$6 billion in FY 2000. Yet, it's nearly the second month of FY 2000, and the targets for which the penalty would be based on have not yet been set — much less checked for compliance.

The only possible way to use the look-back penalty as an offset for FY 2000 is to assess an immediate penalty for failure to meet targets that did not then exist (and still are not even proposed). In short, we are talking about a retroactive tax. This wouldn't be this Administration's first encounter with that — they raised taxes retroactively in 1993 to the tune of \$13 billion.

"Penalty" Could Equal the President's Proposed Per-Pack Tax Increase

If the Administration believes that the tax could raise \$6 billion per year during a fiscal year that is already one month old, that means the "penalty" is actually worth \$6.55 billion on a fully annual basis. Even at \$6 billion, the look-back penalty is virtually equal to the out-year tax-revenue stream of the Administration's original 55-cent-per-pack tax proposal, which amounted to \$66.2 billion over ten years (the revenue stream was \$7.1 billion in 2001, \$6.6 billion in 2002, \$6.4 billion annually in 2003-2006, and \$6.3 billion annually in 2007-2009). Recognizing that the look-back proposal is in fact a retroactive tax, it is safe to assume that the Administration plans it to be a prospective one as well. Over 10 years it would raise \$65.5 billion. Oh, the things they could buy.

Is it Constitutional?

Since the Administration claims this to be a penalty for past failure to meet a standard that was not at the time defined, a basic issue of fairness is raised. How is a company to be held liable for failure to comply with a standard not yet in place? Questions of equitable treatment could become constitutional issues. Consider that, despite what the Administration claims, the look-back penalty is in fact a tax and likely would be legally interpreted as such. Then, how does the Administration legally enforce differential taxation on companies as they meet or do not meet the as-yet undetermined standards? Wouldn't such a differentiation in taxing raise legal questions as to how the same product of different producers could be subject to effectively different tax rates? In addition to the constitutional questions about the taxing powers, the proposal raises some serious questions of due process and equal protection.

It's a Tax Increase

This proposal is an ill-conceived, unworkable, perhaps unconstitutional, retroactive tax that would not offset the increased spending for this fiscal year. In short, it is useless in real terms. It is useful only as a "photo op" and as cover behind which to hide their excessive spending demands. It offers no real solutions, no real savings. For this administration, that's par for the course.

Written by Dr. J.T. Young, 224-2946